

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY SMITH and JEANETTE SMITH,

Plaintiffs-Appellants,

v

JILL MONCZUNSKI,

Defendant-Appellee.

UNPUBLISHED

August 4, 2005

No. 260581

Livingston Circuit Court

LC No. 01-018376-NO

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

PER CURIAM.

Plaintiff Timothy Smith received an electrical shock while using a measuring tape in the vicinity of two electrical service panels in the course of a remodeling project that he was performing for defendant at her home. Plaintiffs appeal as of right, challenging the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10) with respect to their negligence claim brought under a premises liability theory. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

We decline plaintiffs' invitation to reexamine whether plaintiff Timothy Smith was entitled to invitee status. In *Smith v Monczunski*, unpublished order of the Court of Appeals, entered April 15, 2003 (Docket No. 246277), this Court previously determined that Timothy Smith was not an invitee. The issue whether Smith was an invitee or a licensee was raised, briefed, and argued by the parties in the context of defendant's application for leave to appeal. This Court's prior determination that Smith "cannot be said to have held the status of an invitee" was, at worst, judicial dicta. "Unlike obiter dicta, judicial dicta are not excluded from applicability of the doctrine of the law of the case." *Johnson v White*, 430 Mich 47, 54-55 n 2; 420 NW2d 87 (1988). Further, the law of the case doctrine "applies without regard to the correctness of the prior determination." *Driver v Hanley*, 226 Mich App 558, 565; 575 NW2d 31 (1997).

Plaintiffs argue that even if plaintiff Timothy Smith had only the status of a licensee, the trial court nevertheless erred in granting summary disposition for defendant because she should have known of the hazardous condition of the electrical system in her home.

* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment.

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.”

“[A] landowner owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved.” *Kosmalski ex rel Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 65; 680 NW2d 50 (2004). “A landowner does not owe his licensees any duty to inspect or to repair his premises.” *Burnett v Bruner*, 247 Mich App 365, 373; 636 NW2d 773 (2001).

Plaintiffs argue that defendant should have known of the danger because the evidence indicated that an electrical contractor she hired in 1995 installed the circuit breaker box that allegedly caused the hazard, and defendant failed to obtain a permit or to ensure that a permit was obtained for that work. In support of their argument, plaintiffs cite provisions of the administrative code which state that “[a] person shall not equip a building with electrical conductors or equipment or make an alteration of, change in, or addition to, electrical conductors or equipment without receiving a written permit to do the work described,” and that those who may apply for a permit include a homeowner “who occupies or will occupy a single-family dwelling and other accessory structures located on the same lot intended for use by the homeowner for which the permit is obtained and who will install the electrical equipment as certified by the homeowner on the permit application” 2004 MR, R 408.30818. We agree with defendant that this language does not impose an obligation on the homeowner to obtain a permit unless the homeowner is installing the equipment. Plaintiffs cite no other authority in support of their position that defendant should have known of the danger because she had an obligation to obtain a permit or ensure that one was obtained.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Roman S. Gribbs